*451; 2 MECHEM, SALES, § 1311; *Sweet* v. *Colgate*, 20 Johns (N. Y.) 196; *Mixer* v. *Coburn*, 11 Metc. (Mass.) 559; and it makes no difference that the seller knew that the buyer intended the chattel for a specific purpose, to which he erroneously supposed it to be adapted, for here the buyer relies on his own judgment, not on that of the seller. *Dickenson* v. *Jordan*, 11 Ired. L. (N. C.) 166, 53 Am. Dec. 403; *Hight* v. *Bacon*, 126 Mass. 10. But as was said in *Curtis & Co. Mfg. Co.* v. *Williams*, 48 Ark. 325, 3 S. W. 517—"there are exceptions to the rule as well established as the rule itself." One of these exceptions is in the case of a sale by a manufacturer of, or a dealer in, the goods sold. In this case the rule of caveat emptor does not apply. But even here a well defined and settled distinction prevails. "When a person contracts to supply an article which he manufactures, or in which he deals, to be applied to a *particular purpose* and under such circumstances that the buyer necessarily trusts to the skill of the seller, there is in that case an implied warranty that the article is reasonably fit for the purpose to which it is to be applied." ANSON, CONTRACTS (Knowlton's 2nd Ed.) *131, n[1]. *Hight* v. *Bacon*, (supra). 2 MECHEM, SALES, §§ 1343-4. 35 CYC. 402; *Jones* v. *Just*, L. R. 3 Q. B. 197; *Drummond* v. *Van Ingen*, 12 A. C. 294. But if the buyer, as in the principal case, orders a specific article, or a known described article, there is no warranty of fitness for a particular purpose, even though the manufacturer is informed of the purpose to which it is to be applied. This is the settled rule both in England and the United States. *Jones* v. *Just* (supra); *Ottawa Bottle & Flint Glass Co.* v. *Gunther et al.*, 31 Fed. 208; *Seitz* v. *Brewer's Refrigerating Mach. Co.*, 141 U. S. 510; *The Telluride Power Transmission Co.* v. *Crane Co.*, 208 Ill. 218.

SALES—RIGHT TO REJECT IN SALE ON APPROVAL.—Plaintiff contracted to sell defendant a player piano for $950 allowing $400 for defendant's old piano and pianola, and agreeing that the player piano should be satisfactory to the defendant. Defendant was not satisfied with the player piano, and demanded a return of his old piano and pianola. On plaintiff's suing for balance of price, defendant denies that there was a sale, and in a counter-claim seeks to recover damages for the alleged conversion of the old piano and pianola. *Held*, where a sale is made subject to the approval of the buyer, it suffices to defeat the sale that the buyer rejects the goods as unsatisfactory for any reason or no good reason. *Henley-Waite Music Co.* v. *Graniss* (Mo. 1913), 157 S. W. 817.

Where a contract contains a condition that one party must be satisfied with the performance, or be under no obligation, need that satisfaction be an *actual satisfaction* or merely a *reasonable satisfaction?* In case of contracts of sale, as distinguished from contracts for services rendered, a distinction must be made between "sale on trial or approval" and "sale or return." A "sale on trial or approval" is in the nature of an *option to purchase* the goods if they prove satisfactory, or in other words a sale upon "condition precedent." Here the contract is still executory, and property in the goods does not pass until the buyer has expressly or impliedly manifested his approval or acceptance. (*Hunt* v. *Wyman*, 100 Mass. 198) unless a differ-

ent intention appears, while a "sale or return," is in the nature of a sale with an option to return if unsatisfactory, or in other words a sale upon "condition subsequent." *Wind* v. *Iler,* 93 Iowa 316, 27 L. R. A. 219. Thus in case of a sale or trial on approval, "it is not enough that he ought to be satisfied, or that the article would be satisfactory to a reasonable man, or that a court and jury deem the article satisfactory. The contract is that the article shall be satisfactory to the vendee himself and not to someone else." 1 MECHEM, SALES, § 665; *Singerly* v. *Thayer,* 108 Pa. St. 291; *Gibson* v. *Cranage,* 39 Mich. 49; *McCarren* v. *McNulty,* 7 Gray 139. But in case of a "sale on approval with a warranty of quality, or where the contract is for "sale or return" (in which case title has already passed), in order to avoid the sale, the reasons required for dissatisfaction would necessarily be more stringent. In those cases appealing to taste, sentiment or artistic sensibility rather than to reason, "It would, of course, be the duty of the buyer to examine the article and not reject it unseen, but there could be no other test than his own convictions or sentiments." 1 MECHEM, SALES, § 667. In cases, however, requiring mechanical fitness, viz.: sale of machine to vendee's satisfaction, there is necessarily involved the duty on the part of the vendee to try it reasonably, in order to determine whether it will work or not, and no arbitrary rejection without a reasonable test would be consistent with the vendee's duty. *Buckley* v. *Meidroth,* 93 Ill. App. 460; *Hartford Sorghum Mfg. Co.* v. *John Brush,* 43 Vt. 528; *Garland* v. *Keeler,* 15 N. D. 548. For further illustrations see 54 Am. Rep. 711.

WILLS—EVIDENCE OF TESTATOR'S STATEMENTS AS TO REVOCATION.—The testator, after making the will which was offered for probate, made and executed other wills which if now in force would operate as a revocation of the former will. The latter wills, however, were not produced, and the proponent, seeking to establish the fact that they in turn were revoked and that the former will had thus been revived, offered evidence of declarations by the testator as to the revocation of the subsequent wills. *Held,* the evidence was admissible. *Aldrich* v. *Aldrich* (Mass. 1913), 102 N. E. 487.

There are three theories as to the admissibility of such declarations. One is that when they are not made in such close connection with the alleged act as to constitute part of the res gestae, they are mere assertions of an external fact offered as evidence of the truth of the assertion, are clearly within the hearsay rule, and are therefore inadmissible. *In re Shelton,* 143 N. C. 218, 10 Ann. Cas. 531; *Throckmorton* v. *Holt,* 180 U. S. 552; *Glass* v. *Scott,* 14 Colo. App. 377, 60 Pac. 186; *Stevens* v. *Stevens,* 72 N. H. 360, 56 Atl. 916; *Waterman* v. *Whitney,* 11 N. Y. 168. Another theory is that while such statements are clearly hearsay, they should be admitted as special exceptions to the hearsay rule. *Sugden* v. *St. Leonards,* 1 L. R. P. D. 203; *Weeks* v. *McBeth,* 14 Ala. 474; *Tyman* v. *Paschal,* 27 Tex. 300; *Patterson* v. *Hickey,* 32 Ga. 159. The courts following this theory, says Mr. WIGMORE, seem to be increasing in number. WIGMORE, EVID., § 1737. The third theory, that followed by the instant case, is that the testator's declarations are admissible not as special exceptions to the hearsay rule, but as circumstantial